

was the criminal conduct encompassed within the offence and no more needed to be proved.

The case, however, sounds a cautionary tale over the need for greater vigilance in properly framing indictments alleging conspiracy to defraud. The alleged agreement itself should be set out with specificity. Moreover, the case highlights the perversity of jury trials for fraud – 133 days for such a simple matter is obscene. Reform in terms of trial by judge alone is imminent. A panacea to the incon-

sistent common law offence of conspiracy to defraud remains distant. The Fraud Bill introduced to the House of Lords on 25 May 2005 disappointingly omitted abolition of this convoluted offence.

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Finding a balance for tackling anti-social behaviour

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Over the past decade the Government has attached great importance to tackling anti-social behaviour (ASB) and has introduced a range of new measures to deal with it. For example, the Housing Act 1996 facilitated actions by social landlords against anti-social tenants, the Crime and Disorder Act 1998 introduced the Anti-Social Behaviour Order, or ASBO, and the Anti-Social Behaviour Act 2003 has introduced further provisions relating to, for example, parenting contracts and orders, dispersal orders, and new powers for tackling environmental problems such as noise, graffiti and waste. And, in January 2004, the Home Office launched its national TOGETHER campaign, which was designed to, “ensure local agencies do more to respond to communities’ concerns [about ASB], to support the decent law-abiding majority and take action against the minority of perpetrators”.¹ The Government’s position could be summarised as follows:

“Increasing numbers of ASBOs and use of other new powers, coupled with effective publicity, is giving communities and agencies the confidence to take a no-tolerance approach to anti-social behaviour.”²

Against this backdrop we conducted a study³ for the Joseph Rowntree Foundation examining public attitudes towards ASB and considered problems and solutions in three case-study neighbourhoods with high levels of ASB. To capture public attitudes we commissioned a suite of questions in the April 2004 Office of National Statistics (ONS) omnibus national survey.⁴ Where possible, we also drew on findings from the British Crime Survey. For the three case-studies, we mounted three or four focus groups per site with residents (comprising young people, parents and older people), and carried out semi-structured interviews with community representatives, and employees of key agencies, including police officers, ASB co-ordinators, housing officers and others. A total of 73 such interviews were conducted across the three areas.

The national picture

For most people in Britain ASB is not a major concern: 61% of respondents in the 2003/4 British Crime Survey (BCS),⁵ for example, reported no bad effects from any of 16 types of ASB. On the other hand, ASB is an acute concern for a significant *minority* people. Rowdy teenagers in the street had a fairly or very big effect on the lives of one in five

respondents to the ONS survey commissioned for this study. ASB tends also to be concentrated in deprived urban areas: a third (34%) of BCS respondents in inner-city areas thought levels of ASB were high in their area.

ASB can take many forms; youth ASB appears to be the most visible and worrisome. For example, 27% of ONS respondents said that rowdy teenagers on the street or youths hanging around were the worst forms of ASB where they lived. Surprisingly, adults under 45 were more concerned about youth ASB than their elders – perhaps because they were more at risk. The ONS survey showed that other forms of ASB, such as vandalism, litter and rubbish, had a smaller impact on people’s lives – though a larger proportion of the population were exposed to these less serious problems.

When asked about methods of tackling ASB, people were more likely to opt for “preventive action to deal with the causes” than “tough action against perpetrators”. Only 20% chose the latter, compared to 66% who opted for preventive action and 11% who favoured both.

The 3 case-study neighbourhoods

In all three areas, graduated enforcement strategies culminating in the deployment of ASBOs were in place, alongside a range of preventive measures undertaken by different agencies, some funded through mainstream services and others through special initiatives. However, enforcement strategies and initiatives to prevent ASB were not always coordinated.

Issues relating to children and young people caused particular concern in all three neighbourhoods. Residents and practitioners spoke about boisterous and rowdy behaviour by children; young people congregating; young people causing damage to property and the environment; and anti-social use of cars and motorbikes by children and young people. People were also concerned about drug and

1 Home Office (2004) *The Home Office Strategic Plan 2004-2008*, London: Home Office, pp.14-15.

2 *Ibid*, p15

3 Millie, A., Jacobson, J., McDonald, E. and Hough, M. (2005) *Anti-social behaviour strategies: finding a balance*, Bristol: Policy Press.

4 The sample was representative of the British population aged 16 or over, with 1,678 respondents and a response rate of 65%.

5 Wood, M. (2004) *Perceptions and experience of antisocial behaviour: findings from the 2003/2004 British Crime Survey*, Home Office Online Report 49/04, London: Home Office.

alcohol misuse, and the impact of neighbour disputes and "problem families".

Focus groups with residents showed how exposure to ASB can provoke a profound sense of powerlessness and lack of control over the social environment. People had real concerns about retaliation if they intervened, and felt that the statutory agencies were largely impotent in the face of serious misbehaviour by young people. This sense of powerlessness appeared to be both a consequence of ASB and a cause, as it increased the chances that worsening ASB would go unchecked.

Explaining and responding to ASB

When talking about the causes of local ASB, respondents tended to provide explanations that were rooted in broader conceptions of social and cultural change. Three main strands of thought, or "narratives", emerged in what was said – although these are by no means mutually exclusive or discrete:

1. *Social and moral decline*: problems of ASB were seen as symptoms of wider social and cultural change – more specifically, a decline in moral standards and family values.
2. *Disengaged youth and families*: ASB was thought to be rooted in the increasing disengagement from wider society of a significant minority of children and young people and (in many cases) their families.
3. *"Kids will be kids"*: ASB was seen as a reflection of the age-old tendency for young people to get into trouble, challenge boundaries and antagonise their elders.

The first two narratives assume that problems of ASB are getting worse because of a generalised process of decline, or because of the increasing disengagement of a minority of British youth and/or their families. The third narrative does not assume that problems of ASB are necessarily getting worse in themselves; but suggests that the *context* of youthful misbehaviour is changing, and as a result people are more likely to perceive young people's behaviour as antisocial and to worry about it. To some extent, the narratives play out tensions between younger and older generations – with the older more likely to articulate the first (and possibly the second) narrative, and the younger to suggest the third. In contrast, ASB practitioners with social welfare and support roles tended to favour the second narrative and to a lesser extent the third.

Those who viewed ASB as an issue of social and moral decline were often highly cynical about the effectiveness of the new range of provisions for tackling it, such as ASBOs and dispersal orders. However they also saw little hope in alternative approaches other than, possibly, community mobilisation against ASB perpetrators. For those who largely viewed ASB in terms of the disengagement of certain young people and their families, early preventative intervention, intensive youth work, and community partnership were thought to offer the most promise. From this perspective, enforcement was necessary, but had to be used selectively and with great care. The "kids will be kids" narrative implied that diversionary activities for young people should be the cornerstone of local ASB strategies.

The need for more preventive work

The Home Office TOGETHER campaign – with its implicit call for higher standards and tougher discipline to

address ASB – points clearly towards a causal narrative of social and moral decline. On the other hand, the fact that problems of ASB are concentrated most heavily in areas facing deprivation and poverty lends weight to the narrative of social exclusion – according to which the losers in a "winner takes all" society create serious problems for others. Research is unlikely to resolve the arguments about the causes of ASB definitively. Processes of social and moral decline are hard to demonstrate and even harder to disprove. However the two perspectives point to different solutions. The more that ASB is regarded as a consequence of deprivation and social marginalisation, the clearer the need for preventive measures that tackle the roots of the problem.

Local practitioners stressed the intractability of problems of disorder in deprived areas. They did not talk about ASB simply as a problem of perpetrators preying on the "law-abiding majority", but as forms of conflict within communities with limited capacity for self-regulation. They regarded the perpetrators as usually young people with limited personal resources, living in areas offering limited opportunities. They tended to see enforcement as only one element to the possible solution, which needed to be balanced with inclusionary measures to encourage a disenfranchised section of society to feel they have a stake in it again. We think that this sort of balance is highly desirable.

Rhetoric and reality

There is a sharp contrast between the vigorous push to prioritise enforcement at a national level, and concerns about the risks of enforcement, and commitment to preventive options, at local levels. The national TOGETHER campaign is time-limited, and to communicate its message clearly, it has used populist language justifying tough enforcement. As a means of mobilising agencies to action, the campaign has much to recommend itself. It appeals to the narrative of declining standards, and encourages the "law-abiding majority" to take a stand against ASB. However, the populist language may fuel public concerns about social order; this pays off only if the tough, resolute response that follows is fully persuasive. However, the 'declining standards' narrative is infused with a deep sense of pessimism about the scope for solutions of any sort, and in particular a well-entrenched cynicism about the likelihood of an effective response from local agencies. There is a risk that the campaign's rhetoric may convince people about the severity of the problem, without persuading them about the effectiveness of the solution on offer. Now that ASB is firmly on the agenda, it may be time for the Government to moderate its ASB rhetoric and to place more emphasis in its public pronouncements on the sort of preventive work that it actually advocates. Perhaps it is time to be "tough on ASB, tough on the causes of ASB"?

The need for clearer definitions

In conclusion we would stress the importance of putting more effort into developing shared definitions of ASB. We appreciate that the TOGETHER campaign tended to avoid doing so, not wishing to curb artificially the range of uses to which the new measures for tackling ASB could be used. Now that the need for action against ASB is more widely accepted, it is time for agencies to be clearer about the ambit of the term ASB.

The first reason for doing so is simple: if local authorities

and police put in place strategies for dealing with ASB, they need to commit resources to these strategies, clarify responsibilities across agencies and manage the performance of those delivering the strategy. This cannot be done unless there is more clarity about where ASB begins and where it ends.

The second reason for attending more closely to definitions is more subtle. The new ASB remedies include some sweeping powers. Civil law measures such as ASBOs supplement the criminal law system of deterrent threat with personalized deterrent threats tailor-made to specific perpetrators. If the threats are ignored, the penalty (potentially up to five years imprisonment) can be heavy. In our view, the universality of the criminal law is an important principle of justice: we are all exposed to the same array of deterrent threats that are embedded in the criminal law. The principle of universality should be abandoned only under clearly specified circumstances. We think it important to develop much more explicit rationales for justifying the deployment of powerful civil law remedies – in order to set agreed limits to their use. We do not have principled objections to the use of civil remedies such as ASBOs under clearly specified circumstances. ASBOs can properly provide victims with relief from the sort of persistent, low-level malice that some so-called ‘neighbours from hell’ can dispense, for example.

However there are risks in the deployment of these civil law powers. The European Commissioner for Human Rights has expressed concern about ASBOs as “personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community”.⁶ Increasingly there are reports of ASBOs misapplied to adults and children with mental health problems or learning difficulties. There is a need for clearer guidance – whether judicial or political – about the limits that should be set to the use of ASBOs.

For further information

The full report, *Anti-social behaviour strategies: finding a balance* is available online at www.jrf.org.uk

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- 6 Gil-Robles, A. (2005) *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom 4th – 12th November 2004*, Office of the Commissioner for Human Rights 8 June 2005, CommDH(2005)6, Strasbourg: Council of Europe, p. 34 Para 110.

Not-for-Profit Organisations and the Combating of Terrorist Financing

Sally Ramage

The horrific terrorist attacks of 7/7 in London have once again focused the minds of policy makers and law enforcement officers on the need to redouble their efforts to trace and stop the sources of terrorist finances. As Denis Lomel, who set up the FBI's Terrorist Finance Operations Section in the wake of 9/11 recently told the BBC, financial investigations of this kind can not only uncover a paper trail, they can in fact be central to preventing further attacks by helping to identify key players within terrorist networks who might not otherwise have come to the attention of the police and security services.¹

Not for profit companies and the charitable sector

In the area of corporate responsibility, not-for-profit companies² mostly have a stewardship role for members, and consequently different governance implications from business corporations. A not-for-profit organisation³ has a fundamental difference in its relationship with company members to the relationship of a profit-making organisation and its members. Not-for-profit organisations, formed to collect money to give aid to developing countries, aid to the poor and homeless, to build schools, hospitals etc., have members whose commitment to the company is to donate money to it. These members must exercise rights for the beneficiaries who are helped by the company. This is their stewardship role.

On the other hand, for-profit organisations have the interest of the shareholders as priority. Consumer interests are only pursued to the extent that these consumer interests are also the same interests of the members of the company.

Directors of not-for profit organisations must have some

ultra vires doctrine with which to constrain them; they do not have the remit to increase shareholders value, as with for-profit organisations; their remit must be, in the case of money for aid companies, to efficiently distribute aid to the most deserving and to pursue fund raising activities to sustain such aid to the needy. Another duty of directors of such not-for-profit organisations is prevention of the majority from stopping the company from achieving optimum efficiency. These aims cannot be achieved by for-profit directors because, although efficiency may be considered as an important objective in company contracts, it never suffices and there is a balance between company law interference and the freedom of contract principle.

Even before the current imperative of combating terrorist financing, the need for the directors of not-for-profit companies to be subject to legal and regulatory constraints was illustrated by incidents of church pastors stealing funds. UK theft and fraud, usually discovered during the audit and submission of annual accounts to the Charity Commission, is perpetrated by cunning people who can hide debts and window-dress the accounts without raising suspicion, especially in the religious sector where trust is often implicit.

- 1 Scott-Joynt, Jeremy *The Bombers' Money Trail*, BBC News, 18 July, 2005 <http://news.bbc.co.uk/1/hi/business/4692857.stm>
- 2 There are more than 153,000 charities registered with the Charities Commission.
- 3 These are 30,000 companies limited by guarantee without share capital, and some do not have to state the word “Ltd” in their name, under the Companies Act 1985 s.30. There are also 58,000 unincorporated companies, 28,000 trusts and 88,000 others.